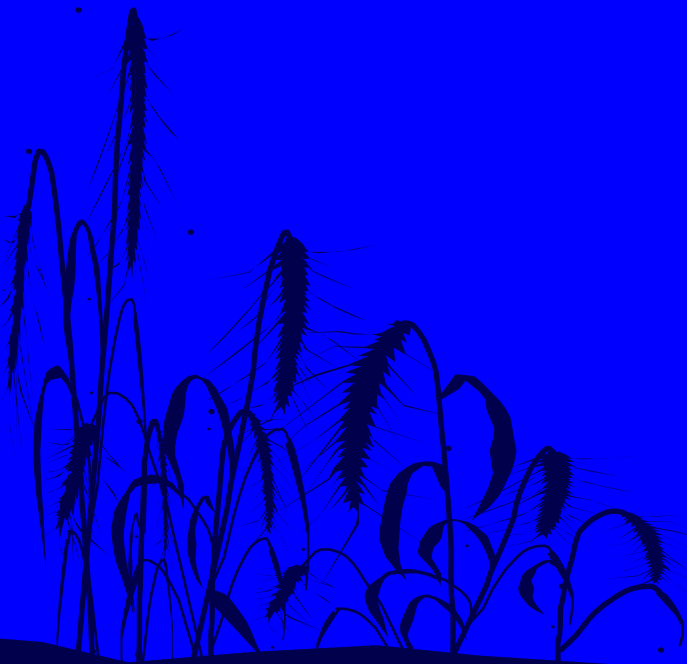


U.S. ARMY CORPS OF ENGINEERS

Regulatory Guidance Letters

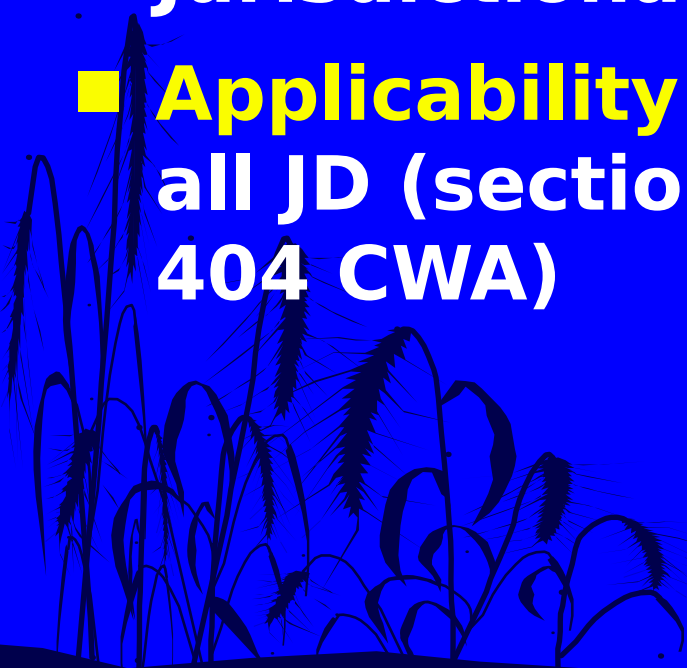
No. 07-01



Regulatory Guidance Letter No. 07-01

Purpose & Applicability

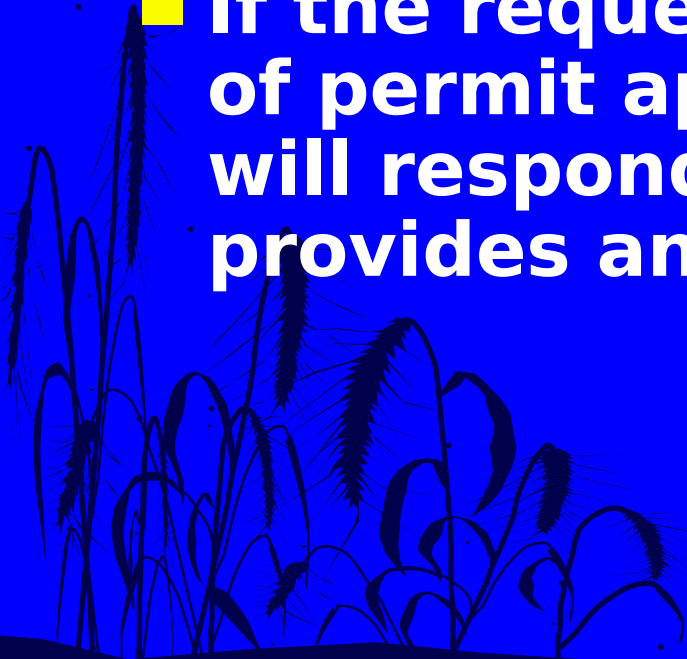
- **Purpose:** This RGL is to provide a consistent approach for making, documenting and approving Jurisdictional Determinations
- **Applicability:** This guidance applies to all JD (sections 9 & 10 RHA and section 404 CWA)



Regulatory Guidance Letter No. 07-01

JD Requests

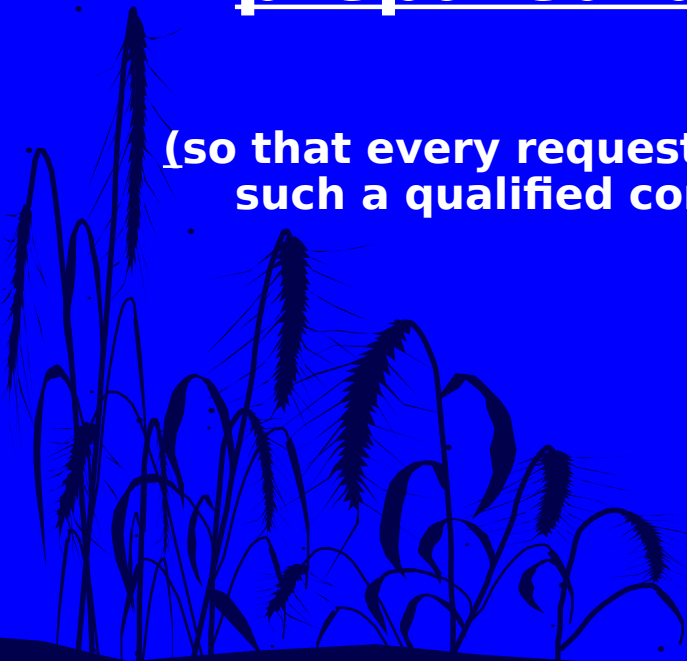
- **JD Requests:** When an applicant requests JD, the Corps will provide a JD whether the JD request is part of or independent of any permit application.
- If the request for the JD is independent of permit application, then, the Corps will respond in the form of a letter that provides an approved JD.



Regulatory Guidance Letter No. 07-01

**As a general rule the District may give
higher priority to JD requests for
which a wetland delineation has been
prepared by a qualified consultant**

**(so that every requester of a JD will have an incentive to employ
such a qualified consultant if that is feasible and appropriate)**



Regulatory Guidance Letter No. 07-01

Degree of Investigation

Field (Site) Visits: Districts will decide the degree of investigation and resource allocation needed when making a field or a desk JD.

Note: an onsite visit is not required for every JD.



Regulatory Guidance Letter No. 07-01

Preliminary JDs Preliminary JDs may be used when:

- The JD is made by another agency
- The District has requested and received an HQ categorical waiver
- The JD is made to address alleged violations and/or enforcement actions.

Regulatory Guidance Letter No. 07-01

Approved JDs

- **Approved JD** is a Corps document stating the presence or absence of waters of the U.S. on a parcel or a written statement including maps identifying the limits of waters of the U.S. on a parcel.
- **Approved JDs** are designated as appealable actions and will include the basis of JD.

Regulatory Guidance Letter No. 07-01

Coordination Requirements for Approved JDs

- The District will not finalize the Approved JD until the appropriate coordination requirements have been met.
- The approved JD form will be posted on the District's regulatory web page within 30-days of completion and for a minimum period of 3 months.



Regulatory Guidance Letter IV. 07-01

Coordination Requirements for Approved

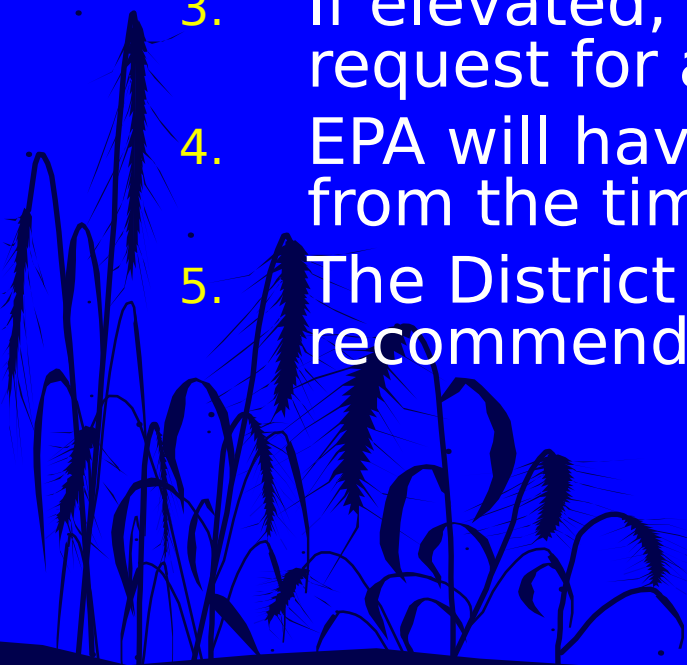
1. Coordination requirements for JDs Involving “Significant Nexus” (SN) with TNW Supporting NWP Application.
2. Coordination requirements for JDs involving Isolated Waters and Non-Nav.W Supporting NWP Application.
3. Coordination requirements for JDs Supporting IP Application.



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Coordination requirements for JDs Involving SN with TNW Supporting NWP Application

1. District completes JD form and submits the JD to EPA Regional Office.
2. EPA have 15 days to notify District if the JD will be elevated to HQ or not (if not, JD is approved).
3. If elevated, EPA and HQ have 10 days to request for additional information.
4. EPA will have up to 40 days to resolve the issue from the time they received the JD.
5. The District will process in accordance with HQ recommendation.



07-01

Coordination requirements for JDs Involving Non-NW, Isolated Waters Supporting NWP

1. District completes ~~JD form and~~ *Application* and submits the JD to Corps HQ.
2. Corps HQ notify EPA HQ of the JD.
3. Within 15 days the District will provide recommendation on whether to assert or decline jurisdiction to Corps and EPA HQs.
4. Corps and EPA HQs have 10 days to request for additional information.
5. EPA and Corps HQs will have up to 40 days to resolve the issue from the time they received the JD.
6. The District finalize the JD and process the NWP in accordance with HQ recommendation.

Note: Coordination time used between the District and the applicant to provide the requested information does not count against the 40 day time period.

07-01

Coordination requirements for JDs with intra-state,

Non-NW, Isolated Waters Supporting IP

Application

1. District completes JD form and submits the JD to EPA Regional Office (RO) and Corps HQ. EPA RO submits JD to EPA HQ.
2. Corps HQ or EPA HQ review the JD within 21 days. (if EPA Regional Admin. does not elevate, the District will finalize the JD.
3. If elevated and if EPA and Corps HQs are in agreement will issue joint Memo within 14 days.
4. If not in an agreement EPA and Corps HQs issue joint Memo to District and EPA RO within 21 days.
5. The District will process in accordance with EPA HQ recommendation.

Regulatory Guidance Letter No. *07-01*

Coordination requirements for JDs with SN Supporting IP Application

- 1. District completes JD form and submits to EPA Regional Office (RO).**
- 2. EPA RO review the JD within 15 days and agree or elevate to Regional Admin. (RA). If elevated,**
- 3. RA and DE have 10 days resolve issues. If not,**
- 4. RA elevates to EPA and Corps HQs. EPA and Corps HQs have 5 days initiate discussions. If resolved,**
- 5. EPA and Corps HQs issue joint Memo to DE & EPA RO within 14 days from the start of discussions. If not resolved,**
- 6. EPA and Corps HQs issue joint Memo to DE & EPA RO within 21 days**
- 7. The District will process in accordance with EPA HQ recommendation.**

Regulatory Guidance Letter No. 07-01

In a nutshell

- Recent Supreme Court cases have created new legal standards for determining jurisdictional waters.
- The new standards requires that the waters be regarded as components of integrated hydrological and ecological systems.
- Based on these standards, we define hydrological permanence and significant nexus.
- We have to applying these standards during our JD.
- Approved JD requires coordination.

